IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 19274 of 2007(T)

PETITIONER:

COMPUTER GRAPHICS LIMITED,
ST.ALBERTS ROAD, ERNAKULAM, REPRESENTED BY ITS
BRANCH MANAGER, K.VENKAT SAI.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:

---

1. INTELLIGENCE OFFICER, SQUAD NO.II,
COMMERCIAL TAXES, ERNAKULAM.

2. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

3. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, ALONG WITH WP(C) No. 19290/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 19274/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PENALTY ORDER NO.ISE.II-67/2001-02 DATED 12/08/2002 ISSUED BY 1ST RESPONDENT.

P2 : COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 05/07/2002.

P3 : COPY OF THE ORDER NO.STRP.209/2002 DATED 27/04/2006 ISSUED BY 2ND RESPONDENT.

P4 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 06/06/2006.

P5 : COPY OF THE ORDER NO.R1-24737/06 CT DATED 09/08/2006 ISSUED BY 3RD RESPONDENT.

P6 : COPY OF THE DEMAND NOTICE ISSUED BY 1ST RESPONDENT DATED 08/10/2002.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 19274 & 19290 of 2007

Dated, this the 8th day of August, 2007

J U D G M E N T

Petitioner is challenging two penalty orders produced as Exts.P1 & P2 in WP(C) No. 19290/2007 for the same offence and evasion of tax for the year 2001-02. The first penalty levied vide order dated 12/08/2002 was modified in first revision by the Deputy Commissioner and in second revision, the order of the Deputy Commissioner is confirmed by the Commissioner vide Ext.P5 in WP(C) No. 19274/2007.

2. Heard learned counsel appearing for the petitioner and the learned Government Pleader.

3. It is seen that the place of business of the petitioner was inspected on 12/11/2001 and substantial stock variation was noticed. Even though petitioner raised various contentions, the same was rejected by the Intelligence Officer and he levied penalty at double the amount of tax sought to be evaded. Though penalty was sustained in first revision, the first revisional authority reduced the penalty to 1 ½ times of tax sought to be evaded, which is confirmed by the Commissioner in second revision vide Ext.P5 order

in WP(C) No. 19274/2007. The learned counsel for the petitioner argued the very same points raised before the revisional authorities. However, I do not find there is any justification for interference because stock variation found during inspection is confirmed by concurrent findings of the three authorities. The petitioner's argument that sales at the time of inspection were not reckoned is not proved with any evidence. The next contention raised is that 36 packets received by Rail on the date of inspection was not considered by the Inspecting Officer is also found against, by the revisional authorities. I do not find any ground to interfere with the clear cut findings of tax evasion by the authorities. So far as the penalty levied is concerned also, I do not find any ground for interference because the penalty levied is only 1½ times of tax sought to be evaded. In the circumstances, WP(C) No. 19274/2007 is dismissed upholding Ext.P5 order of the Commissioner.

4. Ext.P2, challenged in WP(C) No. 19290/2007, is the very same penalty repeatedly imposed on petitioner for evasion of tax for the same period. It is seen from Ext.P2 that penalty is levied again only because petitioner paid the tax assessed based on the penalty order. Probably payment of tax assessed based on penalty

goes to substantiate the case of first penalty, but does not justify a repeated penalty for the same offence. In the circumstances, WP (C) No. 19290/2007 is allowed vacating Ext.P2 but sustaining the first penalty order in the modified form produced as Ext.P5 in WP(C) No. 19274/2007.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg